IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 27578 of 2005(G)

(OS.8/2001 of PRL.MUNSIFF'S COURT,KOZHIKODE-II)

PETITIONERS:

1. TAIKANDY THEKKUMBALATH MADHAVI AMMA, AGED 87 YEARS, D/O.ITHUKUTTY AMMA, NELLIKODE AMSOM DESOM, KOZHIKODE TALUK.

2. TAIKANDY THEKKUMBALATH LEELA AMMA, AGED 62 YEARS, D/O. --- DO ----- RESIDING AT ---DO---

3. TAIKANDY THEKKUMBALATH VASANTHAKUMARI AMMA, AGED 54 YEARS, D/O.---DO---- RESIDING AT ---DO--

BY ADV. SMT.PRABHA R.MENON
ADV. SRI.M.KRISHNAKUMAR

RESPONDENTS:

1. M.N.KESAVAN, AGED 49 YEARS, S/O. TAIKANDY THEKKUMBALATH DECEASED NARAYANAN NAIR, C/O.M.N.GOPALAKRISHNAN, NO.17, (NEW NO.21), IMAM ROAD, LAKSHMIPURAM, ULSOOR, BANGALORE-8.

*2. K. PARU AMMA, AGED 86 YEARS, W/O.--DO-- RESIDING AT ---DO----

*(*NAME OF 2ND RESPONDENT IS DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 03.12.2007 ON I.A.NO. 14219 OF 2005)*

BY ADV. SRI.T.SETHUMADHAVAN
ADV. SRI.PUSHPARAJAN KODOTH
ADV. SRI.K.JAYESH MOHANKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1.	:	TRUE COPY OF AN ORDER DATED 08.07.2004 PASSED IN O.S.NO.8/01, MUNSIFF COURT, KOZHIKODE.

/TRUE COPY/

P.A. TO JUDGE.

K.T.SANKARAN, J.

W.P.(C). NO. 27578 OF 2005

Dated this the 3rd day of December, 2007

JUDGMENT

The challenge in this Writ Petition is against the order dated 8.7.2004 in O.S.No.8 of 2001, on the file of the Court of the Munsiff, Kozhikode II, by which the court below rejected the prayer made by the writ petitioners/defendants to refer the question of tenancy to the Land Tribunal under Section 125(3) of the Kerala Land Reforms Act.

2. The respondents in the Writ Petition filed the suit for recovery of possession of the plaint schedule property on the basis of their title. The plaint schedule property is having an extent of 11.8 cents at Nellikode Village in Kozhikode Taluk. The averments in the plaint would indicate that the property in question and another item of property belonged to Narayanan Nair as per a "Kanacharth" executed in 1921 in his favour by his uncle and karanavar of the tarwad. The first plaintiff is the son of Narayanan Nair and the second plaintiff is the widow of Narayanan Nair. The further case of the plaintiff is that one item of property was sold by Narayanan Nair and in the remaining property there was a kudikidappu. The plaint schedule property is the area excluding the kudikidappu. The plaintiffs' case is that Narayanan Nair went to Bangalore where his son was employed and at that time, he entrusted the property to his sister Madhavi Amma (first defendant) to look after the property. Defendants 2 and 3 are the

daughters of the first defendant. Narayanan Nair died in the year 1985 at Bangalore. The first plaintiff, son of Narayanan Nair, was working at Bangalore in Military Engineering Service. In 1983, Narayanan Nair executed a Will in favour of the first plaintiff. The first plaintiff wanted to settle at Calicut and when vacant possession of the property was demanded, the defendants did not accede. Therefore, the suit was filed.

3. The defendants admitted the title of Narayanan Nair. According to them, the plaint schedule property was leased out by Narayanan Nair in favour of the first defendant in the year 1957, fixing annual "purappad" of Ps.75. The portion of the land covered by the kudikidappu was assigned to kudikidappukars and the balance extent of 11.8 cents is being enjoyed by the defendants as cultivating tenants. It was also contended by the defendants that they are entitled to fixity of tenure and that the question of tenancy is liable to be referred to the Land Tribunal under Section 125(3) of the Kerala Land Reforms Act.

4. The trial court raised issue No.4 as follows:

> "Whether the first defendant is entitled to fixity of tenure as tenant?"

Though such an issue was raised, the court below did not consider that issue at all and the suit was listed for trial. If the question of tenancy really arose for consideration, it was the duty of the trial court to stay the suit and refer the question of tenancy to the Land Tribunal. Both the parties also conveniently

omitted to make a request to decide this question after the issues were settled. The defendants raised the question of reference under Section 125(3) only at the time when the suit was listed for trial.

5. The court below considered issue No.4 and held that the question of tenancy does not arise for consideration. The reasons for holding so, are the following: (1) The lease was an oral lease in the year 1957. The written statement does not disclose that the "creation of lease was witnessed by anybody". (2) There is no pleading that the first defendant paid the "kanam" amount or "purappad" at any point of time. (3) The first defendant did not make any attempt to obtain a purchase certificate from the Land Tribunal. (4) The first defendant had executed a settlement deed in favour of her daughters, namely, defendants 2 and 3, in the year 1987. This settlement deed itself would belie the contentions of the defendants. (5) No attempt was made by the defendants to get the matter referred to the Land Tribunal at any time before the suit was listed for trial. (6) There is not even a remote possibility of the plea of tenancy being upheld by the Land Tribunal. For arriving at the conclusion mentioned as (6) above, the court below has relied on the five other points mentioned above.

6. The reason stated by the court below for declining reference, that the defendants did not apply for reference at any time before the suit was listed for

trial, is unsustainable. Section 125(1) of the Kerala Land Reforms Act provides that no civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under the Act required to be settled, decided or dealt with or to be determined by the Land Tribunal or the Appellate Authority. Sub-section (3) of Section 125 states that if in any suit or other proceedings any question regarding rights of a tenant or of a kudikidappukaran (including a question as to whether a person is a tenant or a kudikidappukaran) arises, the civil court shall stay the suit or other proceeding and refer such question to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situate together with the relevant records for the decision of that question only. Issue No.4 raised by the court below specifically refers to the question of fixity of tenure claimed by the defendants. It was the duty of the court to decide whether the suit should be stayed and the matter should be referred to the Land Tribunal. There is an ouster of the jurisdiction of the civil court under Section 125(1). Once the question is raised by the defendants and an issue is raised by the civil court, it is not necessary for any party to file any application for referring the question of tenancy to the Land Tribunal. It is true that both parties did not invite a decision of the court on the question whether a reference is to be made to the Land Tribunal. The court also did not bestow its attention to issue No.4 before the suit was listed for trial . Rejection of the request for reference on the ground that the defendants did not

make an application for reference is illegal and unsustainable.

7. Another reason stated by the court below is that the first defendant did not apply to the Land Tribunal under Section 72B of the Kerala Land Reforms Act to purchase the right, title and interest of the landlord and obtain a purchase certificate. This finding is also unsustainable. Had the first defendant applied under Section 72B, that application would have been disposed of by either allowing the application or by dismissing the application. Had the application been allowed, the defendants need not ask for reference under section 125(3) because the plaintiffs cannot claim subsisting title after the issue of purchase certificate in favour of the defendants. Had the application so filed by the first defendant been dismissed, the defendant would not be entitled to put forward a plea of tenancy before the civil court, since such a contention would be barred by res judicata. Therefore, I am of the view that non-filing of an application before the Land Tribunal by the first defendant is not a ground for rejecting the request for reference. On the other hand, I am of the view that since no application was filed and the question of tenancy was not finally decided, the question of reference assumes more importance.

8. The court below has stated another reason for rejection of the request for reference, that is, the oral lease is not stated to be witnessed by any person. It is not a requirement that all the matters which are required to be established in

evidence need be stated in the pleadings. Absence of an averment in the written statement that at the time of granting the oral lease, it was witnessed by a particular person or persons is not a ground for rejecting the prayer for reference.

9. Another ground on which the prayer for reference is rejected is that there is no pleading to the effect that the “kanam” amount or “purappad” was paid. It is true that while considering the question of tenancy on the merits, this point may assume importance. But at the time when the court has to decide the question whether a reference is to be made, I do not think that this point would assume much importance.

10. The court below has stated that the gift deed executed by the first defendant in favour of defendants 2 and 3 in 1987 would falsify the case of the defendants. I have gone through the copy of the said gift deed. In the gift deed it is stated that the property was taken on lease by the first defendant from her brother Narayanan Nair in 1957 as per an oral lease and that the property was being possessed and enjoyed by her. There is also a recital in the document that she had made improvements in the property and that kudikidappu was granted in favour of Sarojini. There is nothing in the gift deed which would go against the plea of tenancy raised by the defendants. The court below has not

stated any reason to arrive at the conclusion as aforesaid.

11. The finding that there is not even a remote possibility of the plea of tenancy being upheld by the Land Tribunal is equally unsustainable. The court below has arrived at this conclusion only on the basis of the findings on other points referred to above. Having held that those grounds are not sufficient to come to a conclusion that the question of tenancy need not be referred to the Land Tribunal, I am unable to agree with the aforesaid view taken by the court below.

12. Learned counsel for the respondents submitted that the court below was fully justified in not making a reference to the Land Tribunal in view of the decisions of the Supreme Court and the High Court holding that the civil court is not bound to make reference on a vague plea of tenancy raised in the case. He relied on the decisions in **Thomas Antony** v. **Varkey** (**2000 (1) KLT 12 (SC)**; **Sundaran vs. Mohammed Koya (1995 (2) KLT 115**) and **S.K. Nathan v. Guruvayoor Devaswom (1999 (1) KLT 624).**

13. In **Thomas Antony** v. **Varkey** (2000 (1) KLT 12 (SC)), the Supreme Court was considering a case where the defendant raised a contention that the plaintiff leased out the suit property by oral lease in the year 1971. The plea

raised by the defendant is hit by Section 74 of the Kerala Land Reforms Act which provides that after the commencement of the Kerala Land Reforms Act, no tenancy shall be created in respect of any land and that any such tenancy created shall be invalid. When such an invalid lease is put forward as a defence, even on making a reference to the Land Tribunal, that authority would not be in a position to hold that the defendant is a cultivating tenant entitled to fixity of tenure. A reference to the Land Tribunal in such circumstances would be futile. It was in that context the Supreme Court held in paragraph 22 thus:

> *"...While making a reference to the Tribunal mandatory the legislature cannot be said to have intended that even a patently frivolous, malafide and illegal plea of tenancy taken by a party merely to delay the proceeding and to remain in possession of the property is also to be referred to the Tribunal. The statutory provisions, in our considered view, envisage a case where a bona fide and legally sustainable plea of tenancy is taken by the party, that question shall be referred to the Tribunal..."*

In the separate judgment rendered by Justice K.T.Thomas, it was held thus:

> *" ... Hence we reiterate that a civil court is not obliged to make a reference to the Land Tribunal as per S.125(3) of the Act merely because a party has raised a contention that he is a tenant or a Kudikidappukaran, and the civil court has power to consider whether such contention has been raised without any legal foundation or with the only intention to gain time by protracting the litigation. If the civil court is of opinion that there is not even a*

remote possibility of the plea being upheld the Court can proceed to dispose of the suit without resorting to the circumlocuted route via the Land Tribunal.

5. In the present case appellant's claim that he is a tenant under the respondent was, on the face of it, untenable in view of S.74 of the Act. Hence, the trial court was not obliged to refer the said contention to the Land Tribunal at all. At any rate, the High Court has rightly held it against the appellant."

14. In ***Sundaran vs. Mohammed Koya*** **(1995 (2) KLT 115)** , a Division Bench of this court held that unless the question of tenancy legally arises, there is no obligation for the civil court to make a reference to the Land Tribunal . Reference was made to the larger Bench decision in ***Kesava Bhat vs. Subraya Bhat*** **(1979 KLT 766)** , wherein the larger Bench held that in a suit for injunction, it cannot be said that a question of tenancy arises for consideration and that the question of tenancy need be referred to the Land Tribunal under Section 125 (3) only if the said question arises for decision. The question which arose before the Division bench in ***Sundaran's*** case was whether the defendants were entitled to protection envisaged in Section 106 of the Kerala Land Reforms Act in a Rent Control Petition filed by the landlord. The Rent Control Court and the Appellate Authority held that the claim was not tenable. The Division Bench confirmed that view. It is now well settled by the decision

of this court in **Govinda Panicker vs. Sreedhara Warrier (2000 (2) K.L.T. 43)** that the question whether a lessee of land is entitled to protection under section 106 of the Land Reforms Act need not be referred to the Land Tribunal . In ***S.K. Nathan vs. Guruvayoor Devaswom (*1999 (1) KLJ 624**), the learned single Judge relied on the decision in **1995 (2) KLT 115.** The question which was considered in ***S.K.Nathan's*** case was whether it was necessary in a suit filed by the Guruvayoor Devaswom against the revision petitioner therein to refer the question of tenancy raised by him to the Land Tribunal. The trial court rejected the prayer to make a reference under Section 125(3). The house belonging to the Devaswom and situated within the limits of Cochin Corporation in the Church Landing Road, Ernakulam was in the occupation of the revision petitioner. The house was let out to the revision petitioner . The revision petitioner contended that he was a cultivating tenant. The trial court held that the question of tenancy need not be referred to the Land Tribunal. The High Court confirmed that order. In that case, there was admission by the defendant in Exhibits A1 to A7 that he was a tenant of the building. The court held that in view of the admitted documentary evidence , the defendant cannot claim that he is a tenant in respect of the land.

15. In ***Mathevan Padmanabhan vs. Parmeshwaran Thampi and others,*** **(1995 Supp. (1) SCC 479)** the Supreme Court held thus

:"8. A reading thereof clearly indicates that if in any suit or other

proceeding, any question regarding right of a tenant etc, arises, the civil court should stay the suit or other proceeding and refer such dispute to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situated together with the relevant records for the decision of that dispute in question. Sub-section (1) in that behalf creates a total bar on the jurisdiction of the civil court enjoining that the civil court "shall have no jurisdiction" to settle, decide or deal with any question or to determine any matter which is by or under the Act required to be settled, decided or dealt with or to be determined by the Land Tribunal. On receipt of the decision of the Land Tribunal referred to by the civil court for the purpose of appeal, it must be deemed that the decision of the Land Tribunal be part of the finding of the civil court. Thereby, the civil court, is enjoined to accept the finding recorded by the Tribunal and dispose of the suit in the light of the finding recorded. In case the Tribunal records the finding positively in favour of the tenant or kudikidappukaran, then the suit is required to be dismissed. But the findings recorded by the Tribunal form part of the record of the trial court. As a consequence the appellate court gets power to go into that question, the High Court itself can decide that question or remit it for fresh decision. In that view of the scheme of the Act the High Court is clearly in grave error in divesting the jurisdiction of the Land Tribunal to determine the dispute of tenancy etc, as engrafted in sub-section (1) of Section 125 of the Act and confer jurisdiction on the civil court which it inherently lacks and any decision by the civil court by itself is a nullity. The

interpretation given by the High Court is in the teeth of the peremptory language used by Section 125(1) of the Act and so is clearly unsustainable. The High Court, therefore, was clearly in grave error in divesting the jurisdiction of the Tribunal and conferring the same on the civil court to settle, decide or deal with any question or determine any matter which is by or under the Act required to be settled, decided or dealt with or to be determined by the Land Tribunal. "

16. In ***Sankaranaryanan Potti vs. K. Sreedevi*** **(AIR 1998 SUPREME COURT 1808)**, it was held thus:

"3. If after coming into operation of the Amending Act 35 of 1969 a Civil Suit is filed wherein a question arises regarding the status of a contesting party to be a tenant and such a question by then is not already decided finally between the contesting parties by competent authority under the Amending Act, then the Civil Court will have to follow the procedure of Section 125 (3) read with sub-section (6) thereof and having made a reference to the competent Court under the Amending Act obtain appropriate finding on the said question from the said authority and once such finding is received and which will be treated as a finding by the Civil Court itself, subject to the said finding becoming final in the hierarchy of proceedings before the appellate authorities entitled to re-consider the said finding of the Civil Court appropriate further orders in favour of such contesting party which is finally held to be a tenant can be obtained from the competent authority

under the Amending Act including certificate of purchase under Section 72-K of the Amending Act and such a certificate would be treated as binding and conclusive between the parties.

4. After the coming into operation of the Amending Act 35 of 1969 and in the absence of any suit by then filed wherein the contesting party claims tenancy rights, if such a person already gets appropriate orders from the competent authorities under the Amending Act and his status as a tenant entitled to purchase the disputed land is finally decided by the competent authorities in the hierarchy of proceedings under the Act and certificate of purchase is obtained under Section 72-K of the Amending Act and thereafter if a civil suit gets filed against it by the other contesting party then in such a civil suit it could be said that the question of determination of right of the contesting party as a tenant would not survive as it was already decided by the competent authority under the Act earlier and the said decision having become final in the hierarchy of proceedings under the Amending Act would operate as res judicata between the parties. Under such circumstances there will be no occasion for the Civil Court to follow the procedure of Section 125(3) read with Section 125(6) and only on the basis of the binding decision of competent authority under the Amending Act between the parties the Civil Court can dispose of such subsequently filed suit."

17. Parties to the litigation may put forward several pleas which may come under the various provisions of the Land Reforms Act. A party may claim

that he is a cultivating tenant entitled to fixity of tenure or that he is a kudikidappukaran. Another claim could be that he is a tenant entitled to the benefit of Section 106 of the Land Reforms Act. The claims as a Karaima holder, kudiyiruppu holder and like claims could also be advanced. When the dispute raised by the defendant is to be decided exclusively by the Land Tribunal, there is bar of jurisdiction of civil courts as provided in Section 125 (1) of the Land Reforms Act. In view of the decision in ***Mathevan Padmanabhan's*** case, the decision rendered by the civil court in a case where it is mandatory for reference to the Land Tribunal, would be a nullity. The dictum laid down by the Supreme Court in ***Thomas Antony vs. Varkey*** **{2000 (1) KLT 12 (SC) }** and the various decisions of this court is that when question of tenancy raised by a defendant in a suit does not really arise for consideration, futile reference to the Land Tribunal is unnecessary. For example, as in the case involved in ***Thomas Antony vs. Varkey***, if the defendant raises a contention that he came into possession of the property after 01.04.1964 and he claims that he is entitled to fixity of tenure under the Land Reforms Act , the question need not be referred to the Land Tribunal. Even if it is referred to the Land Tribunal, no finding could be rendered by the Land Tribunal that he is a tenant, in view of the specific bar under section 74 of the Act against creation of future tenancy after commencement of the Land Reforms Act. In a case where the defendant pleads that he is a cultivating tenant in respect of a house and appurtenant land,

which is exempted from the provisions of Chapter II of the Kerala Land Reforms Act, as is clear from Section 3 of the Act, such question need not be referred to be Land Tribunal. Section 3 of the Act provides for exemptions, which states that nothing in Chapter II shall apply to any of the leases or tenancies referred to in clause (i) to (xii) of Section 3. If the case comes under such exempted provision, it need not be referred to the Land Tribunal. In a given case, the claim of tenany or kudikidappu right may be barred by res judicata. Section 108 A of the Act provides that provisions of Section 11 of the Code of Civil Procedure shall apply to the proceedings before the Land Tribunal . If the Land Tribunal is precluded from deciding a question of tenancy as it is barred by res judicata, the civil court need not refer such question to the Land Tribunal. There may be cases where a person who sets up a specific lease has failed in this attempt to get that lease recognised before the Land Tribunal. In a civil suit filed against him, if he puts forward a claim of deemed tenancy , such claim need not be referred to the Land Tribunal, since it is settled law that a person who had set up a specific lease and failed to substantiate the same is not entitled to put forward a case of deemed tenancy. There may be several other instances where reference to the Land Tribunal is not only unnecessary but also unwarranted. In many cases reference made to the Land Tribunal would be a futile exercise and in such cases also the civil court is not bound to refer the question of tenancy raised by the defendant to

the Land Tribunal. The question whether the tenancy set up by the defendant is genuine or not on the merits of the claim, whether the defendant would be able to establish the tenancy at the trial, whether he would be able to produce acceptable documents or oral evidence to prove the lease, are all questions beyond the jurisdiction of the civil court at the stage where it has to decide whether a reference under section 125 (3) of the Act is required or not. The exclusive jurisdiction to decide those questions being vested with the Land Tribunal, and as the decision being amenable to correction only by the appellate civil court, the trial court would not be justified in arriving at a tentative finding as to whether the claim made by the defendant is genuine or whether the defendant has a statable case or whether there are chances for him to succeed. Such an enquiry is beyond the scope of section 125 (3) of the Act.

18. Land Tribunals were established after the commencement of the Kerala Land Reforms Act. Thousands and thousands of applications were filed under Section 72B, 80B and suo motu proceedings were initiated under section 72C of the Act before the Land Tribunals. In several such proceedings, there was no contest. In some cases the contest related to the compensation amount. While in several cases, there was real dispute as to the genuineness or otherwise of the tenancy claims. The Land Tribunals could dispose of many applications filed by the cultivating tenants and issue purchase certificates in

their favour. In contested matters before the civil court, when references were made to the Land Tribunal, it was realised that the machinery provided under section 125 was not as effective as it was contemplated. In **I.L.R. 1994(3) Kerala 460** ***(Ambu vs. Vellachi*)** , this Court held thus:

> *"7. At a time when the functioning of Land Tribunals is in dormant stage without adequate infrastructure provided, Courts should consider whether a reference to the Land Tribunal is inevitable on the facts. Only if reference is found to be indispensable that the court need to resort to that course. Very often such reference , in these days (as the experience shows) amounts to consignment of suit records to cold storage, if not to unreclaimable range. Unfortunately the system of reference under section 125(3) of the Act has now become a haven for contumacious litigants and indulgers in dilatory tactics. Many a times the High Court has sounded to the Government to consider the desirability of retaining the system further. "*

Again in ***Sundaran vs. Mohammed Koya,* 1995 (2) KLT 115**, a Division Bench referred to the Ambu's case and concluded thus:

> *"7. We may again request the Government to consider whether suitable amendment can be made on Section 125 of the KLR Act in the light of the present position resulting from the implementation of such a system. "*

In spite of the repeated observations made and directions issued by this court indicating the need for change in Section 125 of the Act, no amendment was

brought in. The present situation is that majority of the Land Tribunals have been abolished . It is stated that in some districts only one Land Tribunal each is available. Now that a Law Reforms Commission is constituted to make recommendations in respect of the following among other matters :

> *"1. To rectify the defect in the existing laws, to repeal obsolete and unnecessary enactments.*
>
> *2. To consolidate, modify and reform the existing laws;*
>
> *3. To simplify or modernise the laws:*
>
> *4. To adopt new and more effective methods for the administration of law;*
>
> *5. To systematically develop and reform law.* "

I reiterate the view expressed by Justice K.T.Thomas (as His Lordship then was) in **I.L.R. 1994(3) Kerala 460 (*Ambu vs. Vellachi)*** and the Division Bench in ***Sundaran vs. Mohammed Koya,* (1995 (2) KLT 115)** in respect of the need for suitable amendment to Section 125 of the Kerala Land Reforms Act. In view of the abolition of large number of Land Tribunals throughout the State, the object sought to be achieved by Section 125 has become unattainable. Speedy disposal of cases involving tenancy claims would not be possible in the present scenario. Litigants would be put to untold misery and hardship if reference is made to the Land Tribunal under Section 125(3), as the number of Land Tribunals is very few. A copy of this judgment shall be forwarded to the Law

Reforms Commission and also to the Government of Kerala.

19. In the facts and circumstances mentioned above, I am of the view that the court below was not justified in holding that reference to the Land Tribunal is unnecessary and that the question of tenancy does not arise for consideration. The genuineness or otherwise of the claim made by the defendants shall be decided only by the Land Tribunal. On the pleadings in the case, a question of tenancy really arises for consideration by the Land Tribunal and reference under Section 125(3) of the Kerala Land Reforms Act is mandatory in such circumstances.

Accordingly, the Writ Petition is allowed. Ext.P1 order dated 8th July, 2004 in O.S.No. 8 of 2001 on the file of the Munsiff's Court, Kozhikode-II is set aside. The trial court shall stay the suit and refer the question of tenancy raised by the defendants to the Land Tribunal having jurisdiction. No order as to costs.

K.T.SANKARAN
Judge.

lk